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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1360**

In re the Marriage of: Bradley Jude Domagala, petitioner,
Respondent,

vs.

Laura Lynn Domagala,
Appellant.

**Filed September 11, 2017
Affirmed
Hooten, Judge**

Washington County District Court
File No. 82-FA-11-4279

Susan C. Thurston, White Bear Lake, Minnesota (for respondent)

Michael P. Boulette, Messerli & Kramer, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and
Bratvold, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

In this marital dissolution dispute, appellant wife argues that the district court clearly erred by declining to find that she was entitled to compensation because respondent husband violated Minn. Stat. § 518.58, subd. 1a (2016), by transferring a marital asset

without her consent and abused its discretion by awarding respondent conduct-based attorney fees. We affirm.

FACTS

Appellant Laura Lynn Domagala and respondent Bradley Jude Domagala married in 1995. In 2007, the parties purchased a 25% interest in Domagala Farms, Inc., from respondent's uncle for \$120,000. The parties obtained a loan to finance the purchase and used marital funds to make the loan payments.

The parties separated in 2010, and respondent petitioned for dissolution of the parties' marriage in July 2011. In February 2012, respondent sold the parties' property interest in Domagala Farms to his parents for \$120,000 without consulting appellant. With the sale proceeds, respondent satisfied the parties' outstanding mortgage of \$100,000 on the property, leaving him a cash balance of \$20,000 as a result of the sale which he claimed he used to satisfy household expenses and marital debt.

Despite substantial settlement negotiations, the dissolution matter proceeded to trial, beginning in August 2014. Appellant, who is a licensed attorney, represented herself at trial. Appellant has a history of concussions, including a concussion she suffered after falling from a horse in 2002. Appellant noted that after this concussion, she has experienced cognitive difficulties which affect her organizational and thinking processes, social skills, focus, and ability to perform her job responsibilities as an attorney. Appellant requested accommodations from the district court due to her post-concussion syndrome and submitted a letter from her doctor, which stated that trial should be limited to three hours a day with at least one day in between each day of trial. As a result, the district court

adopted a trial schedule of nonconsecutive three-hour days, which ultimately stretched over nine months before concluding in May 2015.

In its January 2016 order, the district court, among other things, rejected appellant's argument that she was entitled to compensation because respondent had violated Minn. Stat. § 518.58, subd. 1a, by selling the parties' interest in Domagala Farms to his parents without her consent. Respondent subsequently moved for conduct-based attorney fees, and appellant moved for amended findings, vacation of the district court's order, or a new trial. In a June 2016 order, the district court granted respondent \$20,000 in conduct-based attorney fees and denied appellant's motion in its entirety. This appeal followed.

D E C I S I O N

I.

Appellant argues that the district court clearly erred by declining to find that she was entitled to compensation due to respondent's violation of Minn. Stat. § 518.58, subd. 1a, by selling the parties' marital interest in Domagala Farms to his parents for the same price the parties purchased the property interest for approximately five years earlier. We disagree.

During the pendency of a dissolution proceeding, each spouse owes a fiduciary duty to the other with regard to the handling of marital assets. Minn. Stat. § 518.58, subd. 1a. If one spouse transfers or disposes of marital assets during the pendency of the dissolution proceeding without the consent of the other spouse, the district court "shall compensate the other party by placing both parties in the same position that they would have been in had the transfer . . . or disposal not occurred." *Id.* However, this rule does not apply if a spouse

transferred or disposed of the marital assets “in the usual course of business or for the necessities of life.” *Id.* The party claiming that the other improperly transferred marital assets bears the burden of proof. *Id.*

Whether a party violated section 518.58, subdivision 1a, is a question of fact, which this court reviews for clear error. *See id.* (stating that “[i]f the court finds that a party to a marriage [violated the statute] . . . , the court shall compensate the other party”); Minn. R. Civ. P. 52.01 (providing that “[f]indings of fact . . . shall not be set aside unless clearly erroneous”). Findings of fact are clearly erroneous if a reviewing court is “left with the definite and firm conviction that a mistake has been made.” *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (quotations omitted).

Appellant argued to the district court that the sale of the parties’ interest in Domagala Farms was not legitimate, alleging that the \$120,000 sale price was far below market value and overlooked years of appreciation in value. Specifically, appellant argued that she was entitled to \$122,723, which she contended was one-half of the appreciation in value of the parties’ marital interest in the land holdings of Domagala Farms. Appellant also argued that she was entitled to additional amounts for the loss of rental income generated by the parties’ interest in the farm and for her share of the Domagala Farms stock patron dividend.

Specifically, the district court ruled that appellant had not shown that she was entitled to compensation because respondent had violated Minn. Stat. § 518.58, subd. 1, reasoning as follows:

There was no credible and reliable evidence offered at trial regarding the current value of the subject real estate. [Appellant's] testimony and supporting exhibits did not establish that there had been significant increase in the value of the subject farmland. [Respondent's] counsel's objections on the grounds of foundation and speculation were sustained. [Appellant's] requests to retain another expert to appraise the land were untimely.

The district court also noted that there was testimony, corroborated by financial records, that the "subject property was not generating any income" because it was subject to a mortgage that exceeded any income.

Despite concluding that appellant had not met her burden of proof that respondent had violated Minn. Minn. Stat. § 518.58, subd. 1a, the district court expressed concern with respondent's decision to sell the parties' property interest without consulting appellant and noted that respondent had acted "secretive" and in a "misleading" manner regarding the parties' finances. The district court found that respondent had failed to prove, as he had testified, that he had used the \$20,000 he received from the sale of the property interest to cover marital expenses. Therefore, the district court ordered respondent to reimburse appellant in the amount of \$10,000.

Appellant challenges the district court's decision, pointing out that she presented evidence of the value of the parties' interest in Domagala Farms. Appellant's expert, Kevin Conard, testified regarding the value of land owned by Domagala Farms. A 2007 Farm Credit Services of America appraisal report states that the 380-acre parcel was worth \$2,000 an acre at that time. Conard testified that because the land was not appraised after 2007, he consulted reports from the South Dakota State University Extension, which is

affiliated with the United States Department of Agriculture, to ascertain the likely value of the land. Conard stated that the reports valued land in the general area of Domagala Farms at \$1,946 per acre, close to the appraised value of the specific parcel in 2007 of \$2,000 per acre. Conard testified that he also consulted the South Dakota Land Market Trend Report, which provided similar values for the land. Conard stated that, using these sources of information regarding land values in 2012 and 2014, he determined that the land held by Domagala Farms likely had a value of \$3,890 per acre at the time that respondent sold the parties' interest to his parents in 2012 and had a value of \$5,763 per acre in September 2014, near the beginning of trial. Using Conard's land valuation, the parties' one-quarter interest in Domagala Farms would have been worth \$369,550 in 2012 and \$547,485 at the time of trial.¹ Appellant testified that she thought that the value of the parties' one-quarter interest in the land on the date of division was \$343,531 and that she was entitled to approximately \$122,723 for her portion of the appreciation in land value.

In determining that appellant failed to present credible and reliable evidence of the value of Domagala Farms, the district court was critical of Conard's valuation, which was based on general market trends in the general area of the subject real estate, and appellant's reliance on this valuation. While Conrad mentioned that Domagala Farms has pasture, hay ground, and cropland, he did not describe in any significant detail how much of the property consists of these forms of land. Conrad testified that these general market trends were based upon land value in "eastern central South Dakota," without identifying the

¹ \$3,890 x 380 acres x 25% interest = \$369,550.
\$5,763 x 380 acres x 25% interest = \$547,485.

boundaries for such general area and the type of land, resources, or criteria utilized in the report. Conrad mentioned that the “responses” of the survey were “25.9 percent of east central responses for bank and loan officers, farm services agencies, assessors, Extension educators,” but did not explain where the other 74.1% of the responses came from. When the district court sustained respondent’s foundation objection to Conrad’s testimony, appellant requested a continuance so that she could obtain an appraisal of the property. The district court denied the request as untimely, noting that, while it would have preferred to have an appraisal, appellant had a lengthy period of time prior to trial to obtain one.

The district court’s determination regarding the credibility of Conrad’s testimony as an expert was also influenced by his unusual relationship with appellant. Specifically, as noted by the district court in its order, Conrad was a personal friend of appellant’s, helped her prepare for trial, and testified on appellant’s behalf without compensation, despite his testimony that helping people prepare for trial is “what [he does] for a living.” Additionally, the district court observed that Conrad acted as appellant’s “advocate” during the parties’ moderated settlement conference, even though he is not a trained advocate. Appellant and Conrad both testified that appellant gave Conrad a power of attorney to act on her behalf, and appellant testified that Conrad had worked as her personal investigator in the dissolution.²

² On the first day of trial, appellant requested that Conrad be permitted to “help her” during the trial, but the district court denied the request on the basis that such help would constitute the unauthorized practice of law.

In addition to the unusual relationship between appellant and her expert, the district court found that Conard's testimony with regard to appellant's separate farm income on land which she inherited from her family was "misleading" in several respects, and resulted in an unfair assessment of her income. Although this portion of Conrad's testimony did not involve the parties' interest in the Domagala Farms, its comment highlighting his misleading statements provides some insight as to why the district court found Conard's testimony regarding valuation of the Domagala Farms not credible and without foundation.

Appellate courts defer to the district court's opportunity to judge the credibility of witnesses. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). And, this deference includes deference to a district court's implicit credibility determinations. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (noting that "[t]he district court's findings implicitly indicate that the district court found respondent's testimony credible" and stating "[w]e defer to this credibility determination"). Therefore, we defer to this district court's implicit determination that appellant's valuation evidence was not credible.

Appellant argues that the district court erroneously "made proof of the *value* of the dissipated asset an essential element of proof of the dissipation itself," contrary to statute. Appellant argues that the statute does not explicitly require that she prove the value of the transferred asset in order to receive compensation for the transfer. Appellant cites *Haefele v. Haefele*, 621 N.W.2d 758, 765 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001), for the proposition that "a district court's decisions valuing and dividing marital property are made on the evidence submitted by both parties, but neither party bears an affirmative burden of proof." Appellant also contends that if a district court rejects a party's

uncontroverted testimony as to value, remand is required, citing *Tasker v. Tasker*, 395 N.W.2d 100, 104–05 (Minn. App. 1986). These cases, however, are inapplicable to the issue in this case.

It may not always be necessary for the party alleging a violation of Minn. Stat. § 518.58, subd. 1a, to prove the value of the transferred assets. See *Haefele*, 621 N.W.2d at 765. But, here appellant’s claim that she was entitled to compensation due to respondent’s sale of the parties’ interest in Domagala Farms depended on her demonstrating that respondent sold the interest for an amount below the fair market value of the property.

Minn. Stat. § 518.58, subd. 1a, provides that the district court “shall compensate the [wronged] party by placing both parties in the same position that they would have been in had the transfer . . . not occurred. The burden of proof under this subdivision is on the party claiming [a violation of the statute].” Read together, these sentences indicate that a party seeking compensation as a result of a violation of the statute must present credible evidence regarding what position he or she would have been in had the other spouse not inappropriately transferred the marital asset. Therefore, in order to be entitled to a remedy under the statute, appellant had the burden of proving what position she would have been in had respondent not sold the parties’ interest in Domagala Farms to his parents for \$120,000. Because she failed to provide credible evidence on this point, the district court did not clearly err by declining to find under the unusual circumstances present in this case that appellant was entitled to compensation because respondent violated Minn. Stat. § 518.58, subd. 1a.

Furthermore, appellant's contention that *Tasker* requires remand is incorrect. In *Tasker*, a party offered uncontroverted testimony with regard to the value of certain personal property belonging to the parties, but the district court rejected this testimony and found a different value. 395 N.W.2d at 104. This court noted that the district court apparently rejected the party's testimony, but noted that there was no evidence in the record to support the district court's findings as to value and remanded the case, directing the district court to issue comprehensive findings supporting the valuations or reopen the case to gather additional evidence. *Id.* at 105. Here, the district court did not make a finding as to the valuation of the land that was inconsistent with the evidence presented at trial; the district court merely rejected appellant's evidence regarding valuation, determining that it was not credible or reliable. *Tasker* does not require remand under these circumstances.

Given our review of the record and our deference to the district court's findings of fact and credibility, we conclude that the district court did not clearly err by determining that appellant is not entitled to compensation due to respondent's transfer of marital assets under Minn. Stat. § 518.58, subd. 1a.

II.

Appellant argues that the district court abused its discretion by awarding respondent \$20,000 in conduct-based attorney fees. We disagree.

In proceedings under chapter 518, a district court may award attorney fees against a party who "unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2016). The party moving for conduct-based attorney fees "has the burden to show that the conduct of the other party unreasonably contributed to the length

or expense of the proceeding.” *Baertsch v. Baertsch*, 886 N.W.2d 235, 238 (Minn. App. 2016). We review a district court’s award of conduct-based attorney fees for an abuse of discretion. *Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007).

Conduct-based attorney fees are warranted when a party takes “duplicious and disingenuous” positions that lengthen and increase the expense of the proceedings. *Redmond v. Redmond*, 594 N.W.2d 272, 276 (Minn. App. 1999); *see also Korf v. Korf*, 553 N.W.2d 706, 711 (Minn. App. 1996) (affirming award of conduct-based attorney fees based in part on party’s “noncooperation and obstinate position”).

A. Accommodations under the Americans with Disabilities Act (ADA)

First, appellant argues that the district court abused its discretion by awarding respondent conduct-based attorney fees because the district court “effectively taxed [appellant] with the cost of complying with the requirements of the [ADA].” Essentially, appellant argues that the district court awarded fees to respondent based on the additional costs incurred due to the accommodations required because of appellant’s disability.

The ADA provides comprehensive mandates prohibiting discrimination on the basis of disability. 42 U.S.C. § 12101–12213 (2012). Title II of the ADA specifically states that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. The United States Supreme Court has held that Title II of the ADA is a valid exercise of Congress’ section 5 authority under the Fourteenth Amendment as applicable to cases involving the fundamental right of access to the courts. *Tennessee v. Lane*, 541 U.S. 509,

533–34, 124 S. Ct. 1978, 1994 (2004). Respondent does not dispute that appellant is disabled and was entitled to accommodations during the proceedings, but contends that the accommodations did not cause the unreasonable delay or increase in expenses that led the district court to award respondent attorney fees.

In its order awarding respondent conduct-based attorney fees, the district court painstakingly discussed the lengthy proceedings, which stretched almost four years from the time when respondent petitioned for dissolution to the conclusion of the dissolution trial. Before trial, the parties engaged in extensive, but ultimately unsuccessful, settlement negotiations. Three separate attorneys represented appellant at various points during pretrial proceedings, but appellant either fired her counsel or her counsel withdrew. The district court encouraged and instructed appellant to retain counsel, but she failed to retain counsel after her third attorney withdrew in November 2013, though she repeatedly assured the district court that she would retain counsel. The proceedings were continued many times. The district court granted all of the parties' joint requests for continuances and granted all but appellant's last request for a continuance, which she made shortly before the first day of trial. Though the district court initially stated that the trial would be limited to four half days of trial, the trial lasted for twelve half days, spanning nine months.

In awarding attorney fees to respondent, the district court recounted respondent's allegations regarding how appellant unreasonably contributed to the length and expense of the proceeding. Specifically, respondent alleged the following conduct: appellant repeatedly made last minute additions to her witness and exhibit lists; appellant tried to introduce large packets of documents that had not previously been disclosed; appellant

created a series of “questionable last minute” promissory notes that required considerable time to examine and understand and required extensive argument and testimony; appellant thwarted settlement negotiations by changing her demands without notice; appellant raised untrue allegations of misconduct on the part of respondent and his counsel; appellant failed to exchange, review, and mark her exhibits before trial; though appellant appeared willing to abide by partial settlement agreements, she withdrew from many of those agreements without advance notice; appellant repeatedly tried to enter evidence into the record that the district court had previously excluded; appellant omitted material facts and took unreasonable positions; appellant became hostile and anxious when family members who were not testifying at trial sat in the courtroom; and, appellant’s accounting was often skewed, requiring considerable cross-examination to understand. The district court stated that it had observed “most if not all of the behavior described” by respondent.

The district court acknowledged that appellant suffered from significant health challenges, but rejected appellant’s argument that her conduct during trial was solely the result of her post-concussion syndrome. The district court, relying on its observations of appellant’s conduct and her submissions, stated that “there were so many moments of focus, shrewd legal acumen, and persuasive legal analysis on the part of [appellant] that it is hard to accept her contention that she should not be held responsible for any of her behavior and bad judgment in this case.” The district court stated:

Not all of [appellant’s] obstinacy and refusal to follow this [c]ourt’s directives can be ascribed to [appellant’s] health issues. There were countless moments in time, during the tenure of this dissolution proceeding, where [appellant] engaged in behaviors that appeared to be driven more by

retaliation and a sense of betrayal than by her post-concussion syndrome. For example, it did not go unnoticed by this [c]ourt that during the post-trial motion hearing, [appellant] broke into crying and sobbing fits only when [respondent's] counsel was speaking. In the end, [appellant] must be held accountable for her role in unreasonably contributing to the burgeoning expenses and excessive length of this proceeding.

The district court noted that respondent was requesting \$30,908.35 in attorney fees, one-half of the attorney fees that he had incurred from April 2013, after the district court dissolved the parties' marriage, to March 2016, when the post-trial motion hearing was held.

The district court stated that respondent's request for one-half of the attorney fees appeared to take into account the effect that appellant's post-concussion syndrome and its sequelae had on her conduct and judgment during the proceedings. The district court then stated that it would "view the attorney's fees request through the prism of what the parties may have incurred in attorney fees and costs had [appellant] not chosen to represent herself and not been suffering from her various health challenges." Taking all of this into consideration, the district court found that fairness and equity required that respondent be awarded \$20,000 in attorney fees.

Appellant argues that the district court's comment about the "prism" through which it was evaluating respondent's attorney fee request indicates that the district court based its attorney fee award on the additional costs incurred due to appellant being a pro se litigant with a disability. This argument is without merit because it relies on reading the district court's comment out of context. Immediately before its sentence describing the prism, the district court indicated that the fact that respondent was only asking for one-half of his

attorney fees, rather than the full amount, indicated that respondent had already taken into account the effects of appellant's disability on the litigation in asking for attorney fees. Because the effects of appellant's disability were already taken into account, the district court reviewed the request for attorney fees in the light of the fees that would have typically been expended in a dissolution proceeding involving similar issues.

Moreover, to the extent that appellant argues that the obstinate behavior cited by the district court in awarding fees was caused by her health issues, this argument is without merit. Although the district court encouraged appellant to retain counsel and appellant indicated she would do so, appellant failed to retain counsel after her third attorney withdrew from her representation. Though appellant consistently told the district court that she was having problems understanding the proceedings because of her health issues, the district court found that this claim was belied by appellant's "intelligent, poignant, and effective questions" of her and respondent's experts. And, as appellant acknowledges, the district court granted her requested accommodation, adjusted courtroom protocol to facilitate her presentation of her case, and provided numerous continuances and frequent breaks.

The district court was very familiar with the parties, their history of continuing conflict, and how appellant's medical issues impacted her behavior, and therefore was in a better position than is this court to evaluate the extent to which appellant's conduct unreasonably contributed to the time and expense of the proceeding. *Cf. Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) ("[A]ppellate courts defer to [district] court credibility determinations."). Under these circumstances, we cannot say that the

district court's award of attorney fees was improperly based on conduct caused by her disability.

B. Amount of Attorney Fees Attributable to Appellant's Conduct

Although respondent provided the district court with an itemized statement of all attorney fees incurred and requested that the district court award one-half of those fees or \$30,908.35 as conduct-based attorney fees, appellant argues that respondent's submissions in support of his motion for attorney fees did not adequately document the amount of attorney fees specifically attributable to appellant's conduct. In support of her argument, appellant cites an unpublished decision of this court, *Gruenstein v. Gruenstein*, No. A16-0083, 2016 WL 4263161, at *8–10 (Minn. App. Aug. 15, 2016), *review denied* (Minn. Oct. 26, 2016). Her reliance on this case, however, is misplaced because this court's unpublished opinions do not have precedential value. Minn. Stat. § 480A.08, subd. 3 (2016). Moreover, *Gruenstein* is distinguishable because the magistrate's award in that case was “untethered” to the evidence in the record. *Gruenstein*, 2016 WL 4263161, at *10. Here, the district court, in extensive and thoughtful findings in its 70-page order, identified appellant's conduct unrelated to her disability that justified the award of conduct-based attorney fees.

Based upon this record, we conclude that the district court did not abuse its discretion in awarding respondent conduct-based attorney fees.

Affirmed.